IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1505 OF 2005

Bansantlal Hariram Ahuja ...Applicant.

V/s

1. Sheela Haresh Aidasani & Anr. ...Respondents.

Mr. S.T. Khera for the applicant.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 15th March, 2005

P.C.:

1. Heard the learned Counsel for the applicant.

2. This is an application for quashing the process which was issued by order dated 1/10/2002 and framing of the charge dated 13/1/2005.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that material alteration has been made by the complainant in the cheque which was given to her. He submitted that it is admitted by her in the statutory notice as also in the complaint that five undated cheques were given to her. The learned Counsel has relied on section 87 of the Negotiable Instruments Act which states that material alteration renders the instrument void as against the party who does not give his consent. The learned

Counsel relied upon the Judgment of the Andhra Pradesh High Court in the case of D. Venkatasubbareddy and another vs. Dist. Collector, Nellore, reported in AIR 1986 Andhra Pradesh 124.

4. I am unable to accept the submissions made by the learned Counsel for the applicant. The question whether consent was, in fact, given or not is a question of fact which will have to be determined after the evidence is adduced by both the parties and the said question cannot be decided at this stage. The complainant in her complaint has stated that pursuant to the directions given by the applicant, the date was inserted in the cheque in August 2002. Thus, this question will have to be decided after the evidence is adduced by both the parties. No case is made out for quashing the complaint. Application is, therefore, rejected. All the points raised herein are kept open before the Trial Court which shall be decided by the Trial Court at the final hearing.

V.M. KANADE, J.